

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

DAVALOUS J. BROWN,

Plaintiff,

vs.

No. CV 19-00719 KG/LF

BRAD LUNSFORD, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court *sua sponte* under Fed. R. Civ. P. 41(b) on the Complaint filed by Plaintiff Davalous J. Brown on August 6, 2019 (Doc. 1). The Court will dismiss the Complaint without prejudice for failure to comply with Court orders, statutes, and rules, and failure to prosecute.

At the time it was filed, the Complaint indicated that Plaintiff was incarcerated at the Northeastern New Mexico Detention Facility. (Doc. 1 at 3). Plaintiff did not pay the filing fee or submit an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915. On December 21, 2021, the Court ordered Plaintiff to cure these deficiencies within 30 days by either paying the filing fee or submitting an application to proceed *in forma pauperis*. (Doc. 2). The Order advised Plaintiff that, if he failed to cure the deficiencies within the 30-day time period, the Court could dismiss this proceeding without further notice. (Doc. 2 at 2). The Court also sent Plaintiff the forms for submitting an application under § 1915. (Doc. 2 at 2-3). More than 30 days elapsed after entry of the Court's Order to Cure Deficiencies and Plaintiff did not pay the filing fee, submit an application to proceed under § 1915, or otherwise respond to the Court's December

21, 2021 Order. The copy of the Court's Order to Cure Deficiencies mailed to Plaintiff at his address of record was returned as undeliverable. (Doc. 3).

The Court issued an Order to Show Cause on January 3, 2022. (Doc. 4). In the Order to Show Cause, the Court directed Plaintiff Brown to show cause why the case should not be dismissed for failure to keep the Court advised as to his address. (Doc. 4 at 1-2). The Order to Show Cause also advised Plaintiff Brown that, if he did not respond to the Order within 30 days, the Court could dismiss this proceeding without further notice. (Doc. 4 at 3). The copy of the Court's Order to Show Cause sent to Plaintiff Brown at his address of record was returned as undeliverable. (Doc. 5). New Mexico Department of Corrections' records show that Plaintiff has been released from custody and he has not provided an updated mailing address.

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required collect the filing fee from the Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Plaintiff Brown has failed to either pay the filing fee or submit an application to proceed under § 1915. Plaintiff was directed to comply with the statutory requirements or show cause why he should not be required to do so. (Doc. 2, 4). Plaintiff failed to comply with or respond to the Court's Orders.

Pro se litigants are also required to follow the federal rules of procedure and simple, nonburdensome local rules. *See Bradenburg v. Beaman*, 632 F.2d 120, 122 (10<sup>th</sup> Cir. 1980). The local rules require litigants, including prisoners, to keep the Court apprised of their proper mailing address and to maintain contact with the Court. D.N.M. LR-Civ. 83.6. Plaintiff Brown has not kept the Court apprised of his proper mailing address and has not communicated or maintained any contact with the Court since August 2019.

Plaintiff Brown has failed to comply with the Court's orders of December 21, 2021, and January 3, 2022, failed to comply with statutory provisions, including 28 U.S.C. § 1915, failed to

comply with the local rule D.N.M. LR-Civ. 83.6, and failed to prosecute this action. The Court may dismiss this action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure or local rules, to comply with statutes, and to comply with court orders. *Olsen v. Mapes*, 333 F.3d at 1204, n. 3. The Court will dismiss this civil proceeding pursuant to Rule 41(b) for failure to comply with statutes, rules, and Court Orders and failure to prosecute this proceeding.

IT IS ORDERED that the Complaint filed by Plaintiff Davalous J. Brown (Doc. 1) is DISMISSED without prejudice under Fed. R. Civ. P. 41(b) for failure to comply with rules, statutes, and the Court's Orders, and failure to prosecute.



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UNITED STATES DISTRICT JUDGE